UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

ANDREW ELLIOTT,)
Plaintiff,))
v.) No. 4:06-CV-948-CDP
DEPARTMENT OF SOCIAL SERVICES, DIVISION OF FAMILY SERVICES,)))
Defendant.	<i>)</i>)

ORDER AND MEMORANDUM

This matter is before the Court upon the motion of Andrew Elliott for leave to commence this action without payment of the required filing fee. *See* 28 U.S.C. § 1915(a). In addition, plaintiff has filed a motion for appointment of counsel. Based upon the financial information provided with his motion, the Court will grant plaintiff leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). Furthermore, the Court has reviewed plaintiff's complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B), and will dismiss it prior to service of process. Plaintiff's motion for appointment of counsel will be denied as moot.

28 U.S.C. § 1915(e)(2)(B)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Jackson Sawmill Co. v. United States*, 580 F.2d 302, 306 (8th Cir. 1978).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the

complaint the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 31-32 (1992); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds, Davis v. Scherer*, 468 U.S. 183 (1984).

The complaint

Plaintiff seeks declaratory and monetary relief pursuant to 42 U.S.C. § 1983 against the Department of Social Services, Division of Family Services. Plaintiff's complaint concerns denial of medical services for hand and eye injuries when he was unemployed and had no health insurance.

Discussion

Plaintiff's complaint fails to state a claim under § 1983. Plaintiff cannot bring suit against defendant Department of Social Services, Division of Family Services because it is not a "person" for purposes of § 1983. *See Harris v. Missouri Court of Appeals, Western Dist.*, 787 F.2d 427 (8th Cir. 1986); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 63 (1989).

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. 1] be **GRANTED**. *See* 28 U.S.C. § 1915(a).

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief may be granted or both. *See* 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [Doc. 4] be **DENIED** as moot.

An appropriate order shall accompany this order and memorandum. Dated this 24th day of July, 2006.

Coefficient D Penny UNITED STATES DISTRICT LODGE